

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA

SERENDIPITOUS, LLC/MELT; MELT)
FOOD TRUCK, LLC d/b/a MELT; and)
FANCY'S ON FIFTH, LLC, d/b/a/)
FANCY'S ON FIFTH,)

Case No.: 2:20-cv-00873

Plaintiffs,)

v.)

THE CINCINNATI INSURANCE)
COMPANY,)

Defendant.)

DEFENDANT'S MOTION TO DISMISS

COMES NOW Defendant The Cincinnati Insurance Company ("Cincinnati"), by and through counsel, and moves this Court, pursuant to Federal Rule of Civil Procedure 12(b)(6), for an order dismissing all claims asserted against Cincinnati in Plaintiffs' Second Amended and Supplemental Complaint. As grounds for said motion, Cincinnati asserts that Plaintiffs have failed to state a claim upon which relief may be granted and Cincinnati therefore is entitled to be dismissed as a matter of law. In support of its motion, Cincinnati relies its Brief in Support of Its Motion to Dismiss Pursuant to Rule 12(b)(6), Fed. R. Civ. Pro. filed

contemporaneously herewith, which includes the following attached and incorporated exhibits:

- Exhibit A: Certified copy of Insurance Policy issued to Serendipitous LLC/Melt, Melt Food Truck LLC DBA Melt, Fancy's on Fifth LLC DBA Fancy's on Fifth.
- Exhibit B: 11th Circuit Opinion in *Mama Jo's, Inc. v. Sparta Ins. Co.*, Case No. 18-12887, 2020 WL 4782369 (11th Cir. Aug. 18, 2020) (Proctor J., sitting by designation);
- Exhibit C: CDC Reopening Guidance for Cleaning and Disinfecting (4/28/2020);
- Exhibit D: Order of the State Health Officer Suspending Certain Public Gatherings Due to Risk of Infection by COVID-19 (Applicable Statewide) dated March 19, 2020.
- Exhibit E: Order of the State Health Officer Suspending Certain Public Gatherings Due to Risk of Infection by COVID-19 (Applicable Statewide) dated April 28, 2020.
- Exhibit F: Order Granting Defendant's Motion to Dismiss in *Diesel Barbershop, LLC, et al. v. State Farm Lloyd's*, Case No. 5:20-CV-461-DAE (W.D. Tex. Aug. 13, 2020);
- Exhibit G: Order Denying Plaintiffs' Motion for Summary Judgment and Granting Defendant's Cross-Motion for Summary Judgment in *Rose's I, LLC, et al. v. Erie Ins. Co.*, Civil Case No. 2020 CA 002424 B (Sup. Ct. D.C. Aug. 6, 2020);
- Exhibit H: July 1, 2020 hearing transcript from *Gavrilides Mgm't Co., LLC v. Michigan Ins. Co.*, Case No. 20-258-CB-C30 (Mich. Cir. Ct., Ingham Cty.);
- Exhibit I: Order Granting Defendant Michigan Insurance Company's Motion for Summary Disposition in *Gavrilides Mgm't*

Co., LLC v. Michigan Ins. Co., Case No. 20-258-CB-C30 (Mich. Cir. Ct., Ingham Cty., July 21, 2020);

- Exhibit J: File-stamped copy of hearing transcript in *Social Life Magazine, Inc. v. Sentinel Ins. Co., Ltd.*, 1:20-cv-03311-VEC (S.D.N.Y.);
- Exhibit K: Complaint, *Inns By The Sea v. Cal. Mut Ins. Co.*, Case No. 20CV001274 (Superior Ct., State Of Cal., County of Monterrey); and
- Exhibit L: Order, *Inns By The Sea v. Cal. Mut Ins. Co.*, Case No. 20CV001274 (Superior Ct., State Of Cal., County of Monterrey, Aug. 6, 2020).

WHEREFORE, PREMISES CONSIDERED, Cincinnati moves this Court to dismiss Plaintiffs' Second Amended and Supplemental Complaint for failure to state a claim under Fed. R. Civ. Pro. 12(b)(6).

Respectfully submitted,

/s/ Augusta S. Dowd

Augusta S. Dowd (ASB-5274-D58A)

One of the Attorneys for Defendant

The Cincinnati Insurance Company

OF COUNSEL:

WHITE ARNOLD & DOWD P.C.

2025 Third Avenue North, Suite 500

Birmingham, AL 35203

Telephone: (205) 323-1888

Facsimile: (205) 323-8907

adowd@whitearnolddowd.com

CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of August, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all the CM/ECF participant counsel of record.

/s/ Augusta S. Dowd

OF COUNSEL